CONSTITUTIONAL AND VOID. OPINION OF THE HON, A. D. SMITH, in the supreme Court of the Booth, for a With surfer of the Petition of Sherman Mr Booth, for a With surfer of the Petition of Sherman Mr Booth, for a Without Surpress and to be Discharged from Imprisonment.

WARRIGTON, June 7, 1854-11 A.M. On the 27th ait. application was made to me by

ender by his bail, the order of the Commissioner to

"" recognizance again, his neglect and refusal so

a hence the issuing of the writ; and closes with

sow threfore, you the said Masshal, are hereby commanded
with to convex and deliver into the custedy of the keeps of the

common jult the bady of the said Sherman M. Boots, and you

ill keeps of the said sherman M. Boots in no your controly in

tred to receive the said sherman M. Boots in no your controly in

le jult, and blue there act ye keep, until he shall be discharged

Bernmai's, Garland, whereas he seld act of Congress, under which seld complaint was made, punishes the aiding, &c., and not the siling in the secape of 'property,' for which reason said warrant is defective in substance and form."

Upon this application, I could not hesitate to issue the writ according to the prayer of the potitioner. I had hoped, indeed, that, inasmuch as at least two opportunities had been presented to the petitioner, since his original arrest, to apply to the Supreme Court in term time for this writ, that he would lave done so, had he been disposed to avail himself of its instrumentality. The Court was in session at the time of his arrest, and an ajourned session was held, commencing the 15th day of May, at either of which times the petitioner might have presented his application, and obtained the opinion and judgment of the whole Court; and I am at a loss to conceive the motive which may have induced him or his advisers to forego such opportunities. But I have no right to complain that any citizen calls upon me for the discharge of any duty pertaining to my office. I do not complain. Yet I cannot but feel the immense responsibility thrown upon me alone, and may be pardoned for expressing my regret that I am deuprived of the aid and counsel of my associates, so much better able to cope with the grave and intricate questions involved, than I am myself. Whether by design or from necessity, this application has been made to me. I meet the emergency with all the anxiety and concern which it cannot fail to excite, and I hope with some alarse of the firmness which the occasion and the nature of the questions involved, than I am myself. Whether by design or from necessity, this application has been made to me. I meet the emergency with all the anxiety and concern which it cannot fail to excite, and I hope with some alarse of the firmness which the occasion and the nature of the questions involved imperatively demand.

There was no question pertaining to the subject matter of the application, or con

is not necessary here to inquire what would be the and effect of a warrant like the present one, were it

It is not necessary here to inquire what would be the force and effect of a warrant like the present one, were it issued by a judicial officer of the United States. I confers, however, that I have never been able to appreciate the liability to, or danger of, or secessity for collision between the judicial and ministerial authority of the States and the United States.

The line of demarcation is not very dim, and a proper regard to the peculiar functions of each class of officers will render all apprehension on that score a work of super-erogation. But the States will never submit to the assumption that United States Court Commissioners have the power to hear and determine upon the rights and liberties of their citizens, and issue process to enforce their adjudications, which is beyond the examination or review of the State Judiciary. They will cheerfully submit to the exercise of all power and authority by the Federal Judiciary, which is delegated to that department by the Federal Judiciary, which is delegated to that department by the Federal Judiciary within the tenitory of the States shall be and remain supreme in all else, and that the functions of the Federal Judiciary within the tenitory of the States shall be exercised by the officers designated or provided for by the Constitution of the United States, and not be transferred to subordinate and irresponsible functionaries holding their office at the will of the Federal Courts, doing their duty and obeying their mandates, for which neither the one nor the other is responsible.

I recognize most fully the right of every elitizen to try every enactment of the Legislature, every decree or judgment of a court, and every proceeding of the executive or ministerial department, by the written fundamental law of the land. This must be done in a proper and legal manner, in conformity with the rules prescribed by that same law, or in accordance with its provisions; but no law is so sacred, no efficer so high, no power so vast, that the line and the phremet of the constitution may not be applied to it. It is the source of all law, the limit of all authority, the primary rule of all conduct, private as well as official, and the citadel of personal security and liberty.

[Here we omit the consideration of the objections to the twarrant, in the course of which the Judge speaks of the

arrent, in the course of which the Judge speaks of the that those who feel compelled to execute it may well rem M. Booth, the petitioner, for a writ of habeas quire of those who demand official service at their hands, to be directed to Stephen V. R. Ableman, that in taking their "pound of flesh," they shall not "shed

quire of those who demand official service at their hands, to, it was alleged, restrained the petitioner of alls erry. Accompanying the petition was a copy of process, by virtue of which, it was alleged, the liftoner was held in custody.

This writ purported to be what is commonly called mittimus, issued by Winfield Smith, Esq.:

"A Commissioner duly appointed by the District Court of the United States for read District Obstrict of Wisconsin, to the 1th day of March, 1856, at the City of Milwaukre, in suite County and District, unlawfally ided, assetted and abstract a person named Joshus Glover, held to crice or labor in the State of Misconnin, to except from the lawfall based of Charles C. Cotton, a departy of the Marshal of the United Marshal of the United Marshal of the United States for the said District, personnin to except from the lawfall Joshus Glover, by virtue of a warrant issued by the Judge of the Commissioner, its result in holding the petitioner to bail, his subsequent arrest and refeated by his bail, the order of the Commissioner to a hence the issuing of the writ; and closes with the second of the process of the second call in the said of the provisions of the active of the control of t

hope of free, representative and responsible government reast upon the State sovereignites, and the fidelity of State officers to their double allegiance, to the State and Federal flee rounsess, and, so believing, I cannot hesitate in perferning a clear and indispensible duty. Seeking and enjoy in the quiet and caim so beculiar to the position in the Patrician of State and caim so beculiar to the position in the Patrician of State and caim so beculiar to the position in the Patrician of States as solem out to support the Constitution of the United States, as well as of the State of Wisconsin, is bound by a double tie, to the Nation and his State. Our system of Government is two-fold, and so is our allegiance. Federal officers feel less of this, because their eath binds them only to the Constitution of the United States, but State officers have the weight of both resting upon them. To the latter is peculiarly the duty assigned, or rather upon the latter, of necessity, does the obligation rest, of ascertaining clearly, and of asserting firmly, the peculiar powers of both Governments, as circumscribed by the fundamental law of each. To yield a cheerful acquiescence in, and support to every power constitutionally exercised by the Federal Government, is the sworn duty of every State officer; but it is equally his duty to interpose a resistance, to the extent of their respective powers, to every assumption of power on the part of the General Government, which is not expressly granted or peccessarily implied in the Federal Constitution.

Nor can I vield to the doctrine early broached, but as early republished, that any one department of the Government is constituted the final and exclusive judge of its own delegated powers. No such tribunal has been erected by the fundamental law. The judicial department of the federal Government is the creature, by compact, of the several States as sovereignities. That department of the federal Government is the eventual by the fundamental law in the states have delegated, is virtual of the latter to watch closely and resist firmly, every encreachment of the former, becomes every day more and more imperative, and the efficial oath of the functionaries of the States becomes more and more significant. As the power of the Federal Government depends solely upon what the States have granted, expressly or by implication, and as no common judge has been provided for, to determine when the one or the other shall have proved unfaithful to the compact, the solemn pledge of faith exacted from both, has been deemed an effectual guaranty, and a frequent recurrence to the fundamental principles on which our Government is organized. from both, has been deemed an effectual guaranty, and a frequent recurrence to the fundamental principles on which our Government is organized, a sufficient stimulus to every public efficer and to the people at large, both to yield and exact a perfect conformity. But I solemnly believe that the last hope of free representative Federal Government rests with the States. Increase of influence and patronage on the part of the Federal Government, naturally leads to consplication, consolidation to despotism, and ultimate anarchy, dissolution, and all its attendant evils.

anarchy, dissolution, and all its attendant evils.

If the severeignty of the States is destined to be swallorded up by the Federal Government, if consolidation is
to supplant Federation, and the General Government to
become the sole judge of its own powers, regardless of
the solemn compact by which it was brought into existence,
and the source of its own vitality, as an humble officer of
one of the States, bound to regard the last rights and
powers, both of the Union and the States, I want my skirts
to be clear, and that posterity may not lay the catastrophe
to my charge. I am truly thankful for the same feeling
of censcientious firmness on entering upon the discharge
of the duty before me, as would be required in case of
direct invasion, open rebellion, or palpable treason against
our common country.

without the States there can be no Chion. The abro-cation of State sovereigzty is not a dissolution of the Union, but an absorption of its elements. He is the true n.an, the taithful officer who is ready to assert and guard every jot of power rightfully belonging to each, and to resist the slightest encroachment or assumption of power

on the part of either.

The Constitution of the United States is a peculiar instrument, and it has brought into existence and operation

every jot of power rightfully belonging to each, and to resist the slightest encroachment or assumption of power. The Constitution of the United States is a peculiar instrument, and it has brought into existence and operation a peculiar existence of government, But little, if any, nid is furnished in its construction by analogy. It is not merely a grant of powers. It not only confers powers upon the Federal Government, but it guarantees rights to the States and to the citizens. It was not designed merely to provide a General Government for all the States, but to provide a General Government for all the States, but to provide security and protection for the States and people who are parties to the contract by which it is created. Not only did it confer exchange of the States who were the creation, but it provides a general the security of the States who were the creation. For than this; it solemnly enjoined upon both the States and the General Governments. He covered the creation of the States who were the creation of the states and the General Governments the exercise of certain powers and duties, and the abstaining by each from the exercise of powers and functions exclusively pertaining to either.

It is an instrument of grants and covenants. Something like an indenture of conveyance, it contains not only grants of powers, but covenants for the faithful observance of the stipulations therein contained. It creates three distinct departments of government, the executive, legislative and judicial, and grants to each the powers which it was designed that they should repeated to the instrument, by it, solemnly and mutually engaged that they should be certain things should not be done, the instrument, by it, solemnly and mutually engaged that they would do certain things should not be done, the instrument, by it, solemnly and mutually engaged that they would do certain things should not be done, the business of the state and to the popple. In the summer of the states and the proposed powers of the states and the pop

&c. The first appearance of the various provisions of this article, (except in relation to fagitives from labor,) in the National Convention, was in the "plan of a Federal Constitution"—submitted by Charles Pinckney of South Carolina, May 29, 1787.—2 Max. Pap.

The plan contained no reference to fugitives from labor. Various plans were submitted and referred, propositions made and adopted or rejected, when, on the 25th day of July, 1787. a Committee of Detail was appointed, consisting of seven members, of which Mr. Rutledge of S. C. was chairman, "to report a constitution conformable to "the resolutions passed by the Convention."—2 Max. Pap., 1,187.

Chithe 6th day of August Mr. Rutledge, from the Committee of Detail, made a report. In that report the several sections now contained in the 4th article (except the clause in relation to fugitives from labor, which had not yet been thought of,) followed each other, and the article in regard to records, as yet stopped, with the mere assertion of the covenant, that full faith, &c., should be given to them; no power was given to Congress over the matter as yet.

The first suggestion that appears in regard to furfives

as yet.

The first suggestion that appears in regard to furifives from labor, was made on the 2sth day of August, 1757, when article 15, as reported by the Committee of detail, was taken up. This article provided for the surrender of fugi-

when are taken up. This article provided for the surrender of lag-tives from justice.

"Mr. Butler and Mr. Pinckney of South Caroline, moved in re-quire Positive Slaves and servants to be delivered up like criminals. Mr. Sleeman saw no more properly in the public sering and surrendering a slave or servent than a horse.

"Mr. Butler withdrew his proposition, in order that some particu-lar provision might be made apart from this article."—Mad Pap-

"Mr. Butler withdrew his proposition, in order that some neutron provision might be made apart from this arcine," Mad Pap. 1447—8.

On the 29th of August, the provision in regard to Public Acts and Records came under consideration, when various aprepositions of amendment were made, and were inadily referred to a committee, of which Mr. Rutledge was Charman. On the 1st of September, the article, among other matters, was reported back, and now, for the first time, was incorporated in it a power on the part of Congress to legislate upon the subject. Dr. Johnson of Conn. objected to the grant of such power, because it would suthorize the General Legislature to declare the effect of the legislative acts of one State in another State, and Mr. Randolph objected that it might enable the Government to train all State powers. After some amendments the report was agreed to, and thus, in addition to the compact, by which full faith and credit were covenanted to be given to the public acts, records, &c., of one State by every other State, Congress was granted the "power to pre" scribe, by general laws, the manner of proving them, "and the effect thereof."

This history is important, as it not only justifies and requires a distinction to be taken between grants of power and articles of compact, but it clearly demonstrates that the Convention all along, discriminated between grants of power to the Government, and articles of compact between the States, and was extremely jenious and cautious in making such grants, and only did so when it was deemed absolutely necessary.—

Having now traced, through this compact, and discovern.

in making such grante, and only did so when it was deemed absolutely necessary.

Having now traced through this compact, and discovered the time and a more when it became coupled with a power, let us trace along its neighbor in regard to the reclaiming of Fugitive Slaves, and discover, if we can, the time and manner in which it shall be coupled with a grant of power to Congress to secure its efficacy by legislation. We have seen that the first suggestion in regard to the subject was on the 28th day of August, when Mr. Finckney and Mr. Butler moved to connect it with the surrender of fugitives from justice, but withdrew the proposition for the purpose of making a separate provision. On the 29th day of August, Mr. Butler offered such provision in these words:

"If any person, bound to service or labor in any of the United

not enter in the slightest degree into the compromises between the North and the South. I have had time and oppartunity to examine the debates in the conventions for for the adoption of the Constitution of only the States of North Carolina and South Carolina. In the former, the whole of article 4 was read, and though the grants of power, as contradistinguished from mere compact, were scrutinized closely, no objection was made to the absence of such grant, but the article was acquiesced in, without a few words of explanation from Mr. Iredell, who stated that the "Northern delegates, owing to their particular "scruples on the subject of Slavery, did not choose the "word stare to be mentioned, but that was their meaning. In the Soath Carolina Convention, I have been unable to find a word of comment on the subject. In Virginia, it was discussed by Messas, Madison and Randolph, who never claimed for it the character of a power delegated to the National Government. It is no where mentioned as extering into the compromises of the Constitution. How, then, can any one say, that without this provision, the Union could not have been formed! And yet such assertion, contradicted by the truth of history, is made the pretext for the exercise of powers by the General Government, that could not stand for a single moment upon a similar basis, in respect to any other subject-matter.

We have seen how the power of Legislation was granted to Congress in respect to the power and secuples of the National Convention, we may safely affirm, that it had

seen that no such power is granted in respect to the surrender of fugitives from labor, and that it was not even
asked for; and from the known temper and scruples of the
National Convention, we may safely affirm, that it had
been asked it would not have been granted, and had it
been granted no union could have been formed upon such
a basis. The istory of the times, fully justifies this conclusion. Can it be supposed for a moment, that had the
framers of the Constitution imagined, that under this provision the federal Government would assume to override
the State authorities, appoint subordinate tribunals in
every county in every State, invested with jurisdiction
beyond the reach or inquiry of the State-Judiciary, to multiply executive officers ad infinition, whilely independent
of, and irresponsible to the police regulations of the State,
and that the whole army and navy of the Union could be
sent into a State, without the request and against the remonstrance of the Legislature thereof; nay, even that
under its operation the efficacy of the writ of Habeas Corpus could be destroyed, if the privileges thereof were not
wholly suspended; if the members of the Convention had
dreamed that they were incorporating such a power into
the Constitution, does any one believe, that it would have
been adopted without opposition and without debate?
And if these results had suggested themselves to the States
on its adoption, would it have been passed by them, Sab
Silectio, jealous as they were of State Rights and State
Sovereignty? The idea is preposterous. The Union
by itself, with its grant of power added upon full consideration. The second section of the same article contains
three clauses, but all grouped and numbered together.

"The clitizens of each State shall be cuttiled to all privileges and
immunities of clitizens of the several States."

"A person charged in any State with treason, felony or other
crime, who shall fee from justice and be lound in another State,
shall, on demand of the executive antherit

and irresponsible interchourse belong their offer at the will of the Federal Court, doing their days and obeying responsible.

Every jist and title at power ledged of the Federal Court, doing their days and obeying responsible.

Every jist and title at power ledged of the Federal Court, doing their days and obeying responsible.

Every jist and title at power ledged of the Federal Court, doing their days and obeying the power of the federal court, and a regidly assistance.

It is a regidly assistance of the State will be rigidly assistance of power reserved to the State will be rigidly assistance of the state of the state

justice! What State would submit to see its Chief Magistrate dragged before the Federal tribunals on charge of infraction of such a law, or what Federal Court would assume to compel his obedience by mandamus! And yet the assumption of power to legislate at all upon the subject is assuming supreme and unlimited power over the whole matter. There is no middle ground. A bare statement of the proposition assumed is its most effectual refutation.

ment of the proposition assumed is its most electual returation.

The law of 1793 was in fact but little, if any more than organizing the State authorities, for the accomplishment of the constitutional duties devolved upon them. For that very reason it passed without scrutiny, and for a long time was obeyed without question. It was practically nothing more than the States themselves carrying out the constitutional compact. Not until it began to be required that the States should yield up all control over these subjects, and a prostration of their sovereignty was demanded, did attention become aroused. No importance therefore can justly be attached to the fact that this act was passed by an early Congress and was signed by the Father of his country, and was acquienced in by the States and people. It is a remarkable fact that the most startling deviations from strict constitional limits occurred in the very earliest years of the Republic. So it must always be. But time, discussion and experience have heretofore proved adequate correctives. So may they ever prove. Added to those, State sovereignty jeopardized, federal encroachment apprehended, and consolidation menacing, can hardly fail to accomplish the desired ende.

To my mind, therefore, it is apparent that Congress has no constitutional power to legislate on this subject. It is equally apparent, that the several States can pass no laws, nor adopt any regulations, by which the fightive may be discharged from service. Absent laws and regulations must be declared void whenever they are brought to the test of judicial scrutiny, state or national. It is equally apparent that it is the duty of the respective States to make laws and regulations, for the faithful observance of this compact. They have generally done so, and doubites ownid have continued so to do, but for the decision of the United States Supreme Court, in the case of Percey vs. Common courts of the claim to be ascertained! Who were to determine it! Figitives were not to be discharged in consequence of

power which had covenented not to discharge them. Shell be delivered up by the States, not seized by the Federal Government.

The clause as finally adopted reads, "but shall be delivered up on claim of the party to whom such secrete are taken to be ascertained, before the fugitive can be legally delivered up viz: that his service or labor is really due to the party who claims him. How is the fact to be ascertained? A claim is set up to the service of a person. He who makes the claim is denominated by the Constitution a party. The claimant is one party, the person who resists the claim is another party. If he really owes the service according to the laws of the State from which he is alleged to have escaped, he must be delivered up. If the claim is unfounded he cannot be delivered up. The Constitution itself has made up the issue and arranged the parties to it. Can amy proposition be plainer than that here is suspended a legal right upon an issue of fact, which can only be determined by the Constitutional judicial tribunals of the country? It bears no analogy to the extradition of fugitives from justice. In the latter case, no issue is presented by the Constitution, indicial proceedings have already been commenced, and this is but a species of process to bring the defendant into Court. No claim is to be determined. He is to be delivered up from the mere fact that he is charged to be removed to the State demanding him for trial. He is placed in the custody, and under the protection of the law, in the regular course of judicial proceedings. But in the former case there can be no delivery until the claim is tried and determined, and then the fugitive is delivered, not into the custody of the law, but not be possession and control of the party who has established his claim; not to be removed to another State or tribunal for trial, with the shield of the party who has established his claim; not to be removed to another State or tribunal for trial, with the shield of the law over him, but to be reduced, without furthe the custody of the law, but into the possession and control of the party who has established his claim; not to be removed to another State or tribunal for trial, with the shield of the law over him, but to be reduced, without further process or trial, to absolute subjection, to be taken whithersoever the claimant may desire. In the one case, the proceedings are commenced and terminated where the claim is made; in the other the suit is commenced where the offense is committed, and the law sends out its process to bring the defendant to meet the issue. While that process is being served, through all its mutations, he is as much under the protection of the law as he who executes it, and in its eye, both are equal.

Here there is a fact, an issue, to be judicially determined before a right can be enforced. What authority shall determine it? Clearly the authority of the State whose duty it is to deliver up the fugitive when the fact is determined. Until the issue which the Constitution itself creates is decided, the person is entitled to the protection of the laws of the State. When the issue is determined against the fugitive, then the constitutional compact arises above the laws and regulations of the State, and to the former the latter must yield.

To my mind this seems very clear and simple. The whole proceeding is clearly a judicial one, and I will not stee best to demonstrate what, from the preceding re-

whole proceeding is clearly a judicial one, and I will not stop here to demonstrate what, from the preceding re-merks, appears so obvious. The law of 1850, by providing for a trial of the constitutional issue between the parties designated thereby by officers not recognized by any Con-stitution, State or National, is unconstitutional and void.

stitution, State or National, is unconstitutional and void.

It has been already said, that, until the claim of the owner be interposed, the fugitive in this State is, to all intents and purposes, a free man.

The interposition of the claim, by legal process, is the commencement of a suit. "A suit is the prosecution of "some claim, demand or request." [6] Wheat., 407.]

The trial of such claim is the trial of a suit. Therefore the trial thereof must not only be had before a judicial tribunal, but whether proceedings be commenced by the fugitive to resist the claim of the claimant, or by the claimant to enforce and establish it, it would seem that either party would be entitled to a jury. It is no answer to this position to say that neither the States nor the General Government have provided the means for such a mode of trial. ment have provided the means for such a mode of trial. The constitutional right of the party remains the same. The late organization of our County Courts failed to provide a trial by a Constitutional Jury, yet the Supreme Court held that the parties were nevertheless entitled to demand it. If provision is not made for such a trial, it is the duty of the proper authority to make it. Nor is it any answer to this position to say that the proceeding to reclaim and repossess a fugnive from service is not a "suit "at common law. This question is already settled. It has been judicially determined that the term "common "law" was used in the Constitution in contradistinction to suits in Admiralty or equity. Were it otherwise, Congress need only to change the common law form of procedure to nullify the right of trial by Jury in all cases.—See Story Com. 645, et say, 3 Pet. 446.

Mr. Justice Story says:

"In a just sense, the amendment may well be constructed to emorate

Mr. Justice Story says:

"In a just sense, the amendment may well be construed to emorace all saits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume, to settle legal lefts."

We have already seen that the legal right of the claim We have already seen that the legal right of the claim must be settled before a fugitive from labor can be delivered up. We have already seen that a sort is hold to be "the prosecution of some claim, demand or request." The conclusion seems to be irresistable therefore, that the prosecution of the claim to a fugitive from labor, or resistance to such claim by legal proceedings on the part of the fugitive, is a suct, not in equity or admiralty, and hence at common law, within the purview of the Constitution. Of course, I do not pretend to say that such asproceeding is technically a suit at common law, nor is a proceeding by foreign attachment, and many other proceedings which are held to be embraced by the jury provision of the Constitution. Authorities might be multiplied on this subject, were it necessary.

Again, it is said that the Constitution evidendy contemplates a summary mode of proceeding in the case of a fu-

were it necessary.

Again, it is said that the Constitution evidently contemplates a summery mode of proceeding in the case of a fugitive from labor. Where is the evidence of it? Nothing of the kind is found in the history of the provision, nor in its pathway to the Constitution. Nothing of the kind is apparent from the language used; for it distinctly imports a trial of the claim, and a determination of the fact that labor or service is due to the claimant before a delivery can be made. When the evidence of such an inten ion is fornished, there will be time enough to trample down all the forms of law, and set at marght every settled rule of construction. But admit the fact. A provision may be made for obtaining a jury in a summary manner, as is sometimes done for the trial of the right of property, seized by attachment. But I can pursue this subject no further.

Again, the Constitution provides that no person shall be deprived of life, liberty or property, without due process of law. This last phrase has a distinct technical meaning, viz: regular judicial proceedings, according to the course of the common law, or by a regular suit, commenced and procedured according to the forms of law. An essential requisite is due process to bring the party into Court. It is in accordance with the first principles of natural law. Every person is entitled to his "day in court," to be legally notified of the proceedings taken against him, and duly summoned to detend. The passing of judgment upon any person without his "day in court," without due process or its equivalent, is contrary to the law of nature, and of the civilized world, and, without the express guaranty of the Constitution, it would be implied as a fundamental coudition of all civil government. Eut the 16th

ecis or its equivalent, is contrary to the law of nature, and of the civilized world, and, without the express guaranty of the Constitution, it would be implied as a fundamental condition of all civil government. But the 16th section of the constitution. It provides that the ciaimant may go before any Court of Record, or judge in vacation, and without process make proof of the escape and the owing of service or labor; whereupon a record is made of the matters proved, and a general description of the person alleged to have escaped; a transcript of such record made out and attested by the clerk, with the seal of the Court, being exhibited to the judge or commissioner, must be taken and held to be conclusive evidence of the fact of escape, and that service or labor is due to the party mentioned in the record, and may be held sufficient evidence of the identity of the person escaping.

Here is a palpable violation of the Constitution. Can that he said to be by due process of law, which is without process altogether! Here the status or condition of the person is instantly changed, in his absence, without process, without notice, without opportunity to meet or examine the witnesses against him, or rebut their testimony. A record is made which is containing against him, "in many "State or Territory in which he may be found." It is not a process to bring the person before the Court in which the record is made up, but it is no all intents and

has been any adjudication. Certainly there has been none that can be claimed as an authority here. The same may he said in regard to the trial by jury. There are other points equally fatal to this act when tested by the Constitution, but I have not time nor recination now to discuss them.

was so wide and tandamental as greatly to impair the therity of that decision. It affirms the constitutional the act of 1793 upon cotemporaneous expessition in on spect and expressly defies the same rule it another, it

Constitution had sears, and all of the slave States, and all or nearly all the free States continued to exercise the power up to a very recent period.

Cotemporateous history, cotemporateous expessition, early and long continued acquiescence, all go to show the interpretation given to this provision of the Constitution by the States and the people. The slave States passed acts to execute the compact. The free States did the same. The action of the several States, or many of them, shows conclusively that they interpreted the provision as a compact merely addressed to the good faith of the States. The slave States appealed to the free States for legislative action to carry into effect this provision of the Federal Constitution, and demanded of the latter the stern exercise of a power which it is now sought to wrest from them. In 1926, the State of Maryland appointed Commissioners to attend upon the session of the Legislature of Pennsylvania and induce the latter to pass an act to facilitate the reclamation of fugitive shaves. Their mission was successful. Pennsylvania yielded to the solicitations of Maryland's Commissioners, and passed the act of 1926, which was afterward declared void by the Suprome Court of the United States in Prigg vs. Pennsylvania. In 1816 or 1837, similar Commissioners were appointed by the State of Kennecky to the State of the, whose mission resulted in the passage of a most stringent fugnive set by the Legislature of Ohio. So also, about the same time, in regard to Indiana, and I believe Illinois. Up to 1837, the States externed it their duty, and slave States demanded its performance, to provide by law for the execution and faithful observance of this compact. All seemed to regard it as a compact and nothing case; binding, it is trae, and operative as law equally upon all, but still a compact, and a compact only.

esternee, to provide by law for the execution and faithful observance of this compact. All seemed to regard it as a compact and nothing case; binding, it is true, and operative as law equally upon all, but still a compact, and a compact only.

Again, it is respectfully suggested that the whole argument of Mr. Justice Story is based upon what is cometiness called the patitive principle. He assumes that the Constitution makes it the duty of the Federal Government to enforce the right of the owner sourced by the compact, and then infers that it must necessarily have the power; and then infers that it that there is no express power in the Constitution to legislate upon this subject, but it is claimed to be accessarily implied, as incidental to the grant of judicial power. The reclamation of a fugitive is first decided to be a "case" arising under the Constitution of the United States, and hence within the judicial power. But this mode of implying powers can never be sustained. The judicial power is extended it several respects beyond the legislative power. The judicial power has jurisdiction in cases arising between the citizens of different States. A citizen of New-York may sue a citizen of Wisconsin upon a promissory note, bill of exchange, coverants in a deed, in partition of real estate, or even in ejec ment for the possion of title to lands. If a power of legislation way, therefore, be grafted by implication upon a judicial power, congress may assume the whole power of legislation over these subjects in the respective States, and necessarily exclude State legislation, and accomplish, at a blow, the complete prestration and overthrow of the State sovereignty. Other illustrations might be given to dilustrate the dragity of the function with the meaning of the Courts of the United States, and power of legislation over of engrafting a legislative power upon a judicial by implication. This was tried at an early day, and by the same course of roasoning common law judicial power, we can be incidental to that. All the

tenping from article to article, from section to section, and from clause to clause, hoving now over a grant, then over a compact, fluttering now around an implication, then around an incident, to find whereon it may rest its foot; in view of the alarm which has seized upon many of the States in consequence of the enormous power which it has called upon Congress to assume in its behalf, and the deep wounds which it seeks to inflict upon the rights and soversignty of the States and upon the great principles of deep wounds which it seeks to inflict upon the rights and sovereignty of the States and upon the great principles of human freedom; in view of all this, are we not justified in asking of the Supreme Court of the United States to review their decision as the majority pronounced it in the case of Prigg vs. Commonwealth of Penn.

On the contrary, Chief Justice Taney, in his dissenting opinion, though he admits the right of Congress to legis-late, but does not argue it, thinks the compact peculiarly

On the contrary, Chief Justice Faney, in an assume opinion, though he admits the right of Congress to legislate, but does not argue it, thinks the compact peculiarly enjoins the duty upon the States.

If after all the principles of that decision shall be reaffirmed, there still remain the great questions of trial by jury, the unauthorized delegation of judicial power, the exparte proceedings, without process, which change the states of the person whose liberty is attacked, and some others, minouched and undetermined.

We thus find ourselves without any authoritative judicial guide in relation to the act of 1820. The fundamental questions here raised have, some of them, been controverted for some years, and those which it was the design to settle in the case just quoted, remain yet as fruitful subjects of bitter discussion and discordant action; for it may be truthfully affirmed that that decision has never been deemed satisfactory, but has often been called in question on both sides of the controversy. Other questions here presented have not been settled judicially, but as yet every Court and judge is bound to consider and determine for itself, according to its best judgment.

What then is to be done? Let the five States return to their duty if they have departed from it, and be faithful to the compact in the true spirit in which it was conceived and adopted. Let the slave States be content with such an execution of the compact as the framers of it contemplated. Let the referral Government return to the exercise of the just powers conferred by the Constitution, and few, very lew, will be found to disturb the tranquility of the nation or to oppose by word or deed the due execution of the laws! But until this is done, I solemnly believe, that there will be no pence for the States or the Nation, but that agitation, acrimony and hostility will mark our progress, even if we escape a more dreadful calamity, which Is will not even mention.

However this may be, well knowing the cost, I feel a grateful consciounces of

sience. It becomes my duty, therefore, to make the following

It becomes my duty, therefore, to make the following order:

In the matter of the Petition of Sherman M. Booth for a writ of Habess Corpus, and to be discharged from imprisonment. This matter having been heard upon the petition, and return to the writ issued herein, and the return of the respondent Stephen V. R. Ableman thereto, and having been arrund by counsel and there appearing to sufficient cause or warrant for the detention of the said Sherman M. Booth, and no sufficient reason being shown why he should be restrained of his liberty by reason of the premises, or of any thing contained in the return to the said writ of Habesa Corpus, or for any other cause: it is therefore hereby ordered, that the said Sherman M. Booth be, and he is hereby discharged from the said imprisonment whereof he has complained, and that he 29 hence, and at large, without day.

A. D. SMITH, Associate Justice

out day.

A. D. SMITH, Associate Justice
of the Supreme Court of the State of Wisconsin.

APPOINTMENTS BY THE PRESIDENT, By and with the advice and consent of the Senate.

John McKeon of New York, to be Attorney of the United States for the Southern District of New York, in the place of Charles O Conor, resigned, to take effect 20th July, 1854.

Charles L. Weller of California, to be Deputy Postmaster at San Francesco, State of California, in place of Thos. J. Henley, resigned; to take affect let Aug., 1854.

MELLEN & Co. are our Agents for the sale of The Treme la

NEW PUBLICATIONS.

DANIEL BOONE AND THE HUNTERS OF KENTUCKY. By W. H. Bogart. 12mo. pp. 290. Asburn and Suffalo: Miller, Orton & Madigan. New York: James C. Derby. Ample materials for the biography of the famous old backwoodsman of Kentucky have been collected in vari ons quarters, affording to the author of this volume the sources of a lively and interesting narrative. He writes in the spirit of exthasiastic admiration for his hero, but we do not perceive that he has been betrayed into undue partiality. Boone, dertainly, deserves to be ranked with a significant class of "representative men"—a class especially significant in American history. Belonging to a transition period of society, he himself formed a transition style of character, partaking of the wild freedom of savege life, and the sustained force and enterprise of civ-ilization. He was born in the year 1733, in Bucks County, ited character. He soon became a hunter. His ride was as unerring as the bow of Robin Hood. When he was it his eighteenth year, his father removed with his family to North Carolina. A thirst for adventure soon impelled young Boone to cross the mountains, and explore the neither roof, nor house, nor bed was among the necessaries of life. His toils as a pioneer commenced in 1763. Leaving the banks of the Yadkin, in company with five other crness, before he saw "from the top of an eminence the benufiul level of Kentucky." The dress of the party "was of the description usually worn at that period by all or loose, open frock, made of dressed deer skins. Leg-glas or drawers, of the same material, covered the lower for the feet. The cape or collar of the hunting shirt, and appendages indispensable for a hanter. Each person bore his trusty rifle; and as the party slowly made their toilsome way amid the shrubs, and over the logs and loose rocks that accident had thrown into the obscure trail which they danger or a lurking enemy was near. Their garments were seiled and rent, the unavoidable result of long traveling, and exposure to the heavy rains that had fallen; for the weather had been stormy and most uncomfortable, and they had traversed a mountainous wilderness for several miles. Towards the time of the setting sun, the party had reached the summit of the mountain range, up which they had toiled for some three or four hours, and which had bounded their prospect to the west during the day. Here new and indescribable scenery opened to their view. Betore them, for an immense distance, as if spread out on a map, lay the rich and beatiful vales watered by the Kentucky River; for they had now reached one of its northern branches. The country immediately before them to use a western phrase, was 'rolling,' and in places ab other forest animals roamed unnolested, while they varied incident, of stern but remantic adventure, and of deplerable hardships, Boone died in 1820, at the patriarchel age of eighty-six. His story is well told in this volume, and will be read with intense interest by all who have to trace the steps by which the western wildernes

Without a trace of the audacity and extravagance, which are so much in vogue with many recent American writers of fiction, this unique story of Virginia life quietly winds its way to the heart of the reader, by its simple touches of nature, its gentle pathos, and the admirable harmony and fidelity of its coloring. The author, who has seen fit to withhold his name from the public, has a rare perception of the capacities of character for dramatic effect. His personages are not numerous; but each one holds a marked place in the story; and is represented with such a natural life-likeness of portraiture, as to haunt the memory and the imagination, like strong individualities that we have met with in real life. The narrative glides gracefully along through its series of incidents, with no attempt at fine writing, no startling surprises, no boldness of delineation; but the actors for the most part, are made to reveal themselves in the brief, pithy, pregnant dialogues which are evidently the author's favorite mode of expression. In this branch of composition, he is a decided adept, betraying gifts which authorize him to aim at a still more successful accomplishment than even this ren

FIDDLEFORD AND ITS PROFILE. By H. H. RELEV. 12mopp. 580. Samuel Horston
Puddleford is a township of the Far West, though its
Precise locality has not yet been ascerteined. It would
doubtless be difficult to find its name on the most improved map of the United States. Still its veritable history is re corded in this volume. Its leading people have sat for their likenesses which are here given to the life. They may be recognized at once. Now and then the frisky pea of the writer runs into caricature, but usually his portra are faithful as daguerreotypes. Few artists of his kind have shown more tact in converting the odd features character, which turn up in the freedom of Western sock ty, into racy materials for amusement.

The Practical Mechanic's Journal for July, in addition to a great variety of valuable letter-press description of machinery and mechanical improvements, has two tine capperplate engravings showing Scott & Co.'s "Steering Gear for Ships" and Ferguson & Co.'s "Eartheuware Kilns." This Journal now devotes a portion of its contents to American Scientific and Engineering subjects, and experienced writers are employed to furnish a regular supply of matter in this department. The extent and variety of the information embodied in this periodical and the uniform ability with which it is conducted, make it an important acquisition to the interests of scientific progress in this country. (Stringer & Townsend.)

The Practical Draughtsman's Book of Industrial Design is completed by the issue of the Thirteenth Part, forming an elegant quarto volume with 105 pages of Steel Plates and 75 Wood Engravings. The scientific merits of this work are pronounced by the most competent authorities to be of a very high order, and the moderate price at which the American edition is brought out places it within the reach of all classes of purchasers. Stringer &

Atherton and other Toles, by Miss MITTORD comprises the latest production of that delightful author, together with several chorter stories, that have already appeared in one of the English annuals. They will be found to possess the gracefulness and felicity of description which always characterize her pen. (Ticknor & Fields.)

DELEGATES TO THE HARD-SHELL CON-VENTION

Oswego Co.—1. Hon. Delos De Wolfe. Saratoga Co.—1. Heman J. Quackenbush. 2. Samuel

Chapman.
Schengtady Co.—Thomas B. Mitchell.
ROCKLAND Co.—The Hon. Abraham P. Stephens is the
State Delegate, but as he is prevented from attending by
illness, the alternate, Mr. Ackerman, will represent the

ONTIDA CO.—1. Samuel Beardsley. 2. A. B. Bligh. ONTARIO CO.—1. Peter Mitchell. 2. Thos. M. Howell. Ulster Co.—1. Cornelius Hardenbergh. 2. Joseph O.

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Heary P. Curtis.

Costa Rica.—The Panameno has received recent dates from Costa Rica, by which we learn that Commedore Vanderbilt has received a privilege from the Government to open an interoceanic communication across that territory from the Atlantic to the Pacific.

If this he so, the privilege is merely for a route already in the possession of the Nicaragna Company, and of land claimed by the Nicaragna Covernment, the terminus on the Pacific side being Schinas Bay, which is about sixteen miles from San Juan del Sur, and is now the coaling depot of the Nicaragna accareers.

With the exception of the change of station from San Juan del Sur to Schinas Bay, we understand that the new route laid out by Commodore Vanderbilt is the same precisely as that now in use.

route laid out by Commonore vanuerous.

The Costa Rica Government, owing to the secreity of provisions, has issued a decree permitting the free importation for six months of flour rice, corn, and all classes of grain; also of lard, tellow, bed, fah, and other description of povisions.

[Parama Herald, June 24.]